OOD
PM 19-13

Effective: August 16, 2019

To: All Immigration Court Personnel
From: James R. McHenry III, Director JM
Date: August 16, 2019

Use of Status Dockets

PURPOSE:	Provides EOIR policy for use of status dockets in immigration court proceedings
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

A status docket is a docket management tool the immigration courts use to free hearing space on existing master calendar dockets to enable immigration judges to address all cases in the most efficient manner.

Various types of status dockets under different labels[1] have existed at individual immigration courts for many years and, in 2018, the Executive Office for Immigration Review began systematizing the use of such dockets more fully. Although a status docket may not be appropriate for every court due to differences in case volume and predominant case types across different courts, this Policy Memorandum (PM) more formally explicates use of status dockets for those courts that do utilize them.

Only status cases may be placed on a status docket. Status cases are cases in which an immigration judge must delay final adjudication of the case pursuant to law, and there are three defined categories of status cases. A status case is (1) one in which an immigration judge is required to continue the case pursuant to binding authority in order to await the adjudication of an application or petition by U.S. Citizenship and Immigration Services (USCIS), (2) one in which the immigration judge is required to reserve a decision rather than completing the case pursuant to law or policy, or (3) one which is subject to a deadline established by a federal court order. *Case Priorities and Immigration Court Performance Measures*, App'x A, n.7 (Jan. 17, 2018) (Priorities Memo).

[1] For instance, some immigration courts utilized special dockets—sometimes called *Matter of Garcia* dockets after *Matter of Garcia*, 16 I&N Dec. 653 (BIA 1978)—for cases continued due to pending Forms I-130.

Category (1) status cases include many cases in which a continuance has appropriately been granted to await the adjudication of an application or petition by USCIS. Although continuance requests are generally committed to the discretion of an immigration judge, subject to a good cause standard, a body of binding circuit court precedents over the years finding an abuse of discretion when immigration judges have denied motions for a continuance in certain circumstances have effectively made continuances mandatory in those circumstances. For example, a respondent who is the first-time beneficiary of a *prima facie* approvable Form I-130 based on a *bona fide* marriage to a U.S. citizen entered into prior to the initiation of removal proceedings and who is otherwise *prima facie* eligible to adjust status within the United States before an immigration judge, including as a matter of discretion, is generally entitled to a continuance until that Form I-130 is adjudicated by USCIS. *See, e.g. Wu v. Holder*, 571 F.3d 467, 469 (5th Cir. 2009) (collecting cases). In general, an otherwise similarly-situated respondent whose marriage to a U.S. citizen was entered into while in removal proceedings would also be entitled to a continuance to await the adjudication of the Form I-130 by USCIS if the respondent first "establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition." INA § 245(e)(3); *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002). Case law may also require a continuance in situations involving a first-time employment-based petition, Form I-140, pending adjudication at USCIS if an underlying labor certification has already been approved (or is not required), a visa would be immediately available at the time the alien files an application for adjustment of status if the petition were approved, the petition is *prima facie* approvable, and the alien is otherwise *prima facie* eligible to adjust status within the United States before an immigration judge, including as a matter of discretion. *See, e.g., Merchant v. U.S. Att'y Gen.*, 461 F.3d 1365 (11th Cir. 2006). Additionally, immigration judges are generally required to continue cases for aliens who are *prima facie* eligible for an I-751 waiver, including as a matter of discretion, while that waiver application is pending with USCIS. *Matter of Stowers*, 22 I&N Dec. 605 (BIA 1999). Finally, cases in which a confirmed unaccompanied alien child (UAC) has filed an asylum application with USCIS must be continued while that application is pending adjudication with USCIS because USCIS has initial jurisdiction over such applications. INA § 208(b)(3)(C). All of these are examples of types of cases that may be appropriately placed on a status docket, though this list is non-exhaustive as case law among the federal circuits may vary.

Currently, only two types of cases fall within category (2). First, cases in which the immigration judge intends to grant cancellation of removal for certain nonpermanent residents pursuant to INA § 240A(b), which are subject to an annual statutory cap of 4000, also fall within this category if the cap has already been reached in that year. *See* 8 CFR § 1240.21(c)(1); Operating Policy and Procedures Memorandum 17-04, *Applications for Cancellation of Removal or Suspension of Deportation that are Subject to the Cap* (Dec. 20, 2017). Second, cases in which an alien otherwise *prima facie* eligible for adjustment of status before an immigration judge in the United States had an immediately-available visa at the time the adjustment of status application was filed with the immigration court but the visa category subsequently retrogressed by the time of the hearing, should be held in abeyance. *Matter of Briones*, 24 I&N Dec. 355, 357 n.3 (BIA 2007). Cases in which a collateral application subject to a cap not administered by EOIR or over which

immigration judges lack jurisdiction do not fall within this category and are not appropriate for a status docket.

The Office of the General Counsel, the Office of the Chief Immigration Judge, and the Office of the Director will determine cases that may fall within category (3) and will advise the immigration courts accordingly.

No other types of cases are status cases,[2] and it is not appropriate for an immigration court to place other, non-status cases on a status docket. For example, a status case is one in which an immigration judge is required to continue the case pursuant to binding authority in order to *await the adjudication* of an application or petition by USCIS. Thus, it is not appropriate to place a case on a status docket if no application or petition has actually been filed with USCIS. Similarly, status cases do not include cases in which USCIS has already adjudicated the relevant application or petition. Moreover, longstanding case law is clear that it is generally not appropriate to continue proceedings simply because a visa number is not current. *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982) ("In any case, the fact that the respondent has an approved visa petition does not entitle him to delay the completion of deportation proceedings pending availability of a visa number."), *aff'd sub nom. Quintero-Martinez v. INS*, 745 F.2d 67 (9th Cir. 1984); *see also Matter of L-A-B-R-*, 27 I&N Dec. 405, 418 (A.G. 2018) (explaining that "good cause does not exist if the alien's visa priority date is too remote to raise the prospect of adjustment of status above the speculative level"). Further, the U.S. Department of Homeland Security retains authority to grant parole, deferred action, or a stay of removal for aliens without currently-available visas whose immigration proceedings have concluded. Accordingly, except in retrogression situations involving category (2) status cases, a case continued due to a non-current priority date or otherwise unavailable visa is not a status case and should not be placed on a status docket.

A status docket is a case management tool used by an immigration court, and there is no entitlement or right to have a case placed on the status docket. Cases may be placed on a status docket automatically by the immigration court once the immigration judge has ruled that a continuance is warranted and the immigration court determines that the case falls within one of the three categories of status cases described above. In other words, the determination of an immigration court to place a case on the status docket occurs only *after* an immigration judge has appropriately ruled that a continuance is warranted. In no case should an immigration court place a case on a status docket before an immigration judge has determined that a continuance is warranted or when an immigration judge has denied a continuance request.[3]

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[2] To the extent that individual immigration courts previously may have used other definitions of "status cases" contrary to the one in the Priorities Memo, this PM reiterates that there are only three categories of status cases currently and that non-status cases should not be placed on a status docket. To ensure consistency in the handling of status dockets by all courts that use them, this PM also supersedes and cancels any contrary, previous guidance on status dockets.

[3] The decision of an immigration judge to grant or deny a motion for continuance and a determination made by an immigration court regarding the placement of a case on a status docket are independent and distinct actions that should not be conflated, and this PM applies only to the latter process. Immigration judges are expected to follow applicable law in adjudicating continuance requests, *e.g., Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018), and nothing in the this PM should be construed as limiting an immigration judge's discretion, in accordance with applicable law, to adjudicate a motion for a continuance.

When the immigration court places a case on the status docket, the court sends a notice to the parties. The notice informs the parties that the case is being placed on the court's status docket. If appropriate,[4] the notice also informs the parties of a "call-up date" by which the party that made the initial motion for a continuance[5] must provide an update regarding the relevant issue that served as the basis for the continuance. The notice also informs the parties of the next hearing date should the parties fail to submit an update. In all cases, regardless of whether either party submits an update, an alien is expected to appear for the hearing date listed in the status docket notice unless the case is concluded prior to that date or the alien receives notice of a new hearing date from the court.

If either party submits a status update to the court, an immigration judge will determine the next course of action. As appropriate, an immigration judge may treat a status update as a further motion to continue and, if appropriate, may grant the motion. The immigration court will then maintain the case on the status docket and will issue another notice with an updated call-up date and the next hearing date.

If an immigration judge does not believe that the status update warrants a further continuance, an immigration judge may decline to continue the case further and will proceed with the case at the next hearing date.

If a status update indicates that an underlying petition or application has been adjudicated by USCIS, the case will generally be returned to the regular docket pending any further decisions by an immigration judge.[6]

If neither party provides a status update by the call-up date provided in the notice, the alien is expected to appear for the hearing date listed in the status docket notice, and an immigration judge will proceed on that date.

A case may be removed from the status docket if it was not appropriately placed on the docket initially or following the granting of an appropriate motion filed by either party, such as a motion to advance. Additionally, for status cases in category (2), the immigration court may automatically return a case to the regular docket when a retrogressed visa number has become available or when cap numbers become available for cases seeking relief under INA § 240A(b). If a case is removed

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[4] Status cases in category (2) may not necessarily require the parties to take further action, except as required by law, such as updating the respondent's address if necessary and ensuring that required biometric checks have been completed or updated.

[5] Although the party that moved for the initial continuance would generally be expected to update the immigration court if a further continuance is sought, both parties to the proceeding will have information regarding the status of any pending petition or application at USCIS. Consequently, for category (1) cases, regardless of whether a call-up date has been issued, EOIR expects that either party will timely inform the court when USCIS has rendered a decision on an underlying petition or application. A practitioner's intentional or knowing failure to timely inform the immigration court of the disposition of an underlying petition or application adjudicated by USCIS may be grounds for referral for possible disciplinary action. *See, e.g.*, 8 CFR § 1003.102(j), (o), (n), (q) (disciplinary grounds for practitioners related to frivolous behavior, competence, prejudicial conduct, and diligence).

[6] Nothing in this PM should be construed as prohibiting an immigration judge from granting a joint motion to terminate proceedings without prejudice if the parties file such a motion following the approval of a relevant petition or application by USCIS.

from the status docket and returned to a regular docket, the immigration court will send the parties a hearing notice under the standard hearing notice procedures.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this PM should be construed as mandating a particular outcome in any particular case.

Please contact your supervisor if you have any questions.